

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
CIVIL NO. 3:06cv244**

EDWARD KERRY,)	
)	
Plaintiff,)	
)	
vs.)	<u>ORDER</u>
)	
HARRIS TEETER, INC.,)	
)	
Defendant.)	
)	

THIS MATTER is before the Court on Defendant's Motion to Dismiss Count I of Plaintiff's Complaint (Doc. No. 4), filed June 16, 2006; Plaintiff's Response to the Motion to Dismiss (Doc. No. 6), filed on July 5, 2006; Defendant's Reply to Plaintiff's Response (Doc. No. 11), filed July 17, 2006, and the Magistrate Judge's Memorandum and Recommendation ("M&R") (Doc. No. 12), filed July 19, 2006. The Magistrate Judge recommended that Defendant's Motion to Dismiss be granted. The time for filing objections has since passed, and neither Plaintiff nor Defendant filed objections in this matter. For the reasons stated below, the Court GRANTS Defendant's Motion to Dismiss.

STANDARD OF REVIEW

Pursuant to 28 U.S.C. § 636(b)(1)(B), United States Magistrate Judge Carl Horn III was designated to consider and recommend disposition of Defendant's Motion to Dismiss Count I of the Complaint. The Federal Magistrate Act provides that "a district court shall make a de novo determination of those portions of the report or specific proposed findings or recommendations to which objection is made." 28 U.S.C. § 636(b)(1); Camby v. Davis, 718 F.2d 198, 200 (4th Cir. 1983). "By contrast, in the absence of a timely filed objection, a district court need not conduct a de novo review, but instead must 'only satisfy itself that there is no clear error on the face of the

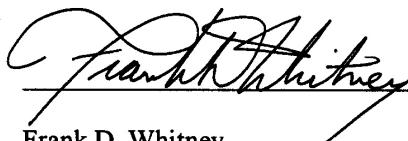
record in order to accept the recommendation.”” Diamond v. Colonial Life & Acc. Ins. Co., 416 F.3d 310, 315 (4th Cir. 2005) (quoting Fed. R. Civ. P. 72 advisory committee's note).

II. CONCLUSION

Accordingly, after a careful review of the record in this case, the Court finds that the Magistrate Judge’s findings of fact are supported by the record and the conclusions of law are consistent with and supported by current case law. See Orpiano v. Johnson, 687 F.2d 44, 47 (4th Cir. 1982) (holding that only a careful review is required in considering a memorandum and recommendation absent specific objections). Thus, the Court hereby accepts the M&R of Magistrate Judge Horn and adopts it as the final decision of this Court for all purposes relating to this case.

IT IS, THEREFORE, ORDERED that Defendant’s Motion to Dismiss Count I of Plaintiff’s Complaint is **GRANTED**.

Signed: August 25, 2006



Frank D. Whitney
United States District Judge

